

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT T. STRATTON, )  
Plaintiff )  
vs. )  
CO III Lt. J.A. TONY, et al., ) Civil Action No. 05-1601  
Defendants ) Judge Donetta W. Ambrose/  
 ) Magistrate Judge Lisa  
 ) Pupo Lenihan  
)

**MEMORANDUM ORDER**

The above-captioned prisoner civil rights complaint was received by the Clerk of Court on November 4, 2005, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation (Doc. No. 20), filed on May 26, 2006, recommended that the complaint be dismissed with prejudice but that Plaintiff could file a motion to reopen accompanied by an amended complaint that complies with Fed.R.Civ.P. 20. Service was made on the Petitioner at SCI Greene, 175 Progress Drive, Waynesburg, PA 15370. The Plaintiff was informed that in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, that they had ten (10) days to file any objections. On June 19, 2006, Plaintiff filed Objections to the

magistrate judge's Report and Recommendation. (Doc. No. 21). Plaintiff explained the delay in filing his objections as being due to circumstances beyond his control, including a transfer to SCI-Fayette. In the objections, Plaintiff complains, *inter alia*, that his complaint should be dismissed without prejudice. The Court agrees. Otherwise, Plaintiff's objections have been found to be without merit. After review of the pleadings and the documents in the case, together with the Report and Recommendation and Petitioner's Objections, the following order is entered:

**AND NOW**, this 29<sup>th</sup> day of June, 2006;

**IT IS HEREBY ORDERED** that the complaint be DISMISSED without prejudice to Petitioner filing an amended complaint(s) that complies with Fed.R.Civ.P. 20 within 30 days of this order. Failure to do so will result in the entrance of an order dismissing the case with prejudice for failure to comply with a court order and or for failure to prosecute.

**IT IS FURTHER ORDERED** that the Report and Recommendation (Doc. No. 20), filed on May 26, 2006 by Magistrate Judge Lenihan, is adopted as the opinion of the court except to the extent inconsistent with this order, i.e., except to the extent it recommended dismissal of the complaint "with prejudice" subject to filing a motion to reopen.

Donetta W. Ambrose  
The Honorable Donetta W. Ambrose  
Chief United States District Court Judge

cc: Lisa Pupo Lenihan  
UNITED STATES MAGISTRATE JUDGE

Robert T. Stratton  
DA-2917  
SCI Fayette  
P. O. Box 9999  
LaBelle, PA 15450-0999